

Assembly Bill No. 124

Passed the Assembly August 5, 1996

Chief Clerk of the Assembly

Passed the Senate July 11, 1996

Secretary of the Senate

This bill was received by the Governor this ____ day
of _____, 1996, at ____ o'clock __M.

Private Secretary of the Governor

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CHAPTER ____

An act to amend Sections 5502, 5503, 5506, 5771, 5772, 5774.5, 5775, 5776, 5777, 5778, 11404, 11501, 11501.1, 11896, 11897, 12115, 12115.1, 12115.3, 12115.5, 12503, 12648, 12648.5, 12648.6, 12753, 12755, 12757.5, 12758, 12758.5, 12783, 12802, 12811, 12814, 12815, 12821, 12822, 12823, 12824, 12825, 12825.5, 12826, 12827, 12827.5, 12828.5, 12829, 12832, 12833, 12841, 12841.1, 12845, 12847, 12848, 12848.1, 12848.6, 12848.7, 12848.9, 12851, 12852, 12853, 12854, 12855, 12856, 12857, 12858, 12859, 12881, 12882, 12883, 12884, 12911, 12931, 12932, 12961, 12991, 12992, 12993, 12994, 12995, 13101, 13102, 13142, 13143, 13144, 13145, 13146, 13147, 13148, 13149, 13150, 13151, 13152, 14012, 14021, 14063, 14101, 14262 and 14513 of, to amend the heading of Chapter 2 (commencing with Section 12751) of Division 7 of, and to add Sections 11472 and 11472.1 to, the Food and Agricultural Code, relating to economic poisons.

LEGISLATIVE COUNSEL'S DIGEST

AB 124, Rainey. Economic poisons.

(1) Existing law requires each registrant of an economic poison to pay to the Director of Pesticide Regulation an assessment on all sales by the registrant of its registered and labeled economic poisons for use in this state.

This bill would require the Director of Pesticide Regulation to keep a record of the classes and sources of income credited to, and disbursed from, the Department of Pesticide Regulation Fund and would require the Department of Pesticide Regulation to publish a report describing in detail the amount and source of funding of, and the costs to operate, each branch of the department.

(2) Under existing law, for various purposes, including administration of the law relating to the registration of economic poisons in this state, the term “economic poison” is defined, and includes “pesticide.”



This bill would substitute the use of the word “pesticide” for the term “economic poison” in provisions of the Food and Agricultural Code.

(3) Existing law provides that state law occupies the entire field of regulation regarding the registration, sale, transportation, or use of pesticides.

This bill would require the director to notify the promulgating entity if the director determines that an ordinance or regulation is preempted by state law, and to maintain an action for declaratory relief to have the ordinance or regulation declared void, and also to bring an action to enjoin enforcement of the ordinance or regulation.

The people of the State of California do enact as follows:

SECTION 1. Section 5502 of the Food and Agricultural Code is amended to read:

5502. The following definitions shall govern the construction of this chapter:

(a) “Agency” means an agency of state government that has responsibility for roadside vegetation control operations on, or along, roadways.

(b) “Pesticide” is defined in Section 12753.

(c) “Property owner” means an owner, lessee, or tenant of real property that is adjacent or contiguous to a roadway over which an agency has responsibility for roadside vegetation control.

(d) “Roadside” means the land adjacent to, or dividing the lanes of traffic of, a roadway.

(e) “Roadway” means any highway, superhighway, expressway, street, road, lane, or other public thoroughfare.

SEC. 2. Section 5503 of the Food and Agricultural Code is amended to read:

5503. The Legislature hereby finds and declares all of the following:

(a) The unannounced and poorly coordinated use of pesticides to control roadside vegetation has too frequently resulted in damage to adjacent or contiguous

private property. In some instances, this activity has caused growers to needlessly suffer economic loss or damage to their crops.

(b) Property owners have a right to know beforehand the manner in which state government intends to control the roadside vegetation adjacent or contiguous to their property.

(c) It is in the public interest to establish a voluntary mechanism by which private property owners may meet and confer with representatives of state government to enter into mutually acceptable voluntary agreements to promote coordinated programs for roadside vegetation control, and thereby minimize damage to adjacent and contiguous property.

(d) Mutually acceptable agreements may include, but are not limited to, provisions whereby the property owner assumes responsibility for roadside vegetation control in a manner which is at least as effective as that proposed by state government, the use of mechanical means of vegetation control, the use of a combination of pesticide and mechanical means of control, a delay in the application of a pesticide, or the use of different pesticides.

(e) Private property owners and representatives of state government are encouraged to voluntarily develop creative and innovative means to accomplish the goals and objectives of this chapter.

SEC. 3. Section 5506 of the Food and Agricultural Code is amended to read:

5506. (a) Within 30 days of receipt of the information required to be provided pursuant to Section 5504, the property owner may request a meeting with representatives of the agency to discuss the agency's proposed schedule for, or method of, roadside vegetation control, or both the schedule and method to be used on, or along, the roadway adjacent or contiguous to his or her property.

(b) Upon receipt of a request for a meeting pursuant to this section, the agency shall meet with the property owner at a mutually agreeable time and location.



(c) The purpose of the meeting shall be to develop and adopt the following:

(1) A schedule for the roadside vegetation control operation .

(2) A method of roadside vegetation control that eliminates, or minimizes, damage to the property owner's property while preserving the ability of the agency to conduct an effective roadside vegetation control program.

(d) The agency shall consider and, if the facts presented to the agency warrant further action in order to carry out the objectives of this chapter, do any or all of the following:

(1) Revise the schedule for the roadside vegetation control operation.

(2) Revise the proposed methods of roadside vegetation control, including, but not limited to, the use of a pesticide or mechanical methods of control, or a combination thereof.

(3) Use different pesticides, or different combinations or concentrations of pesticides.

(4) Enter into an agreement with the property owner whereby the property owner agrees to assume the responsibility, in whole or in part, of roadside vegetation control by any lawful method of control, if the agency determines that the property owner's method is as effective as the method proposed to be used by the agency.

(e) The objective of this section is to establish a procedure for property owners and representatives of agencies to meet and confer in order to develop and adopt mutually acceptable times for, and methods of, well-coordinated and effective roadside vegetation control operations, and thereby minimize damage to adjacent or contiguous property.

(f) If agreement cannot be reached between the property owner and the agency, the agency shall maintain responsibility for decisions affecting roadside vegetation control in the disputed area.



SEC. 4. Section 5771 of the Food and Agricultural Code is amended to read:

5771. When the secretary proclaims an eradication project in an urban area pursuant to Article 4 (commencing with Section 5761), the secretary or the commissioner, pursuant to this article, shall notify residents and physicians practicing in the area, and the local broadcast and print media, before aerially applying a pesticide to effect the eradication.

SEC. 5. Section 5772 of the Food and Agricultural Code is amended to read:

5772. The notice shall be delivered at least 72 hours prior to applying the economic poison. When the application of a pesticide is to be made pursuant to an emergency, the notice shall be delivered at least 24 hours prior to applying the pesticide.

SEC. 6. Section 5774.5 of the Food and Agricultural Code is amended to read:

5774.5. (a) In addition to any other notice requirements of this article, if the secretary determines that it may become necessary to use aerial application of a pesticide in a pest eradication program over an urban area, the secretary shall notify, as soon as it is feasible, the city and county in that affected area of the possibility of an aerial application.

SEC. 7. Section 5775 of the Food and Agricultural Code is amended to read:

5775. If the date of a pesticide application is changed, the notice required by this article shall be redistributed and contain the revised information. Additionally, the secretary shall transmit the revised information to the local broadcast and print media, including not less than two radio stations providing the broadest coverage in the eradication area. No pesticide shall be applied within 96 hours from the date of that change.

SEC. 8. Section 5776 of the Food and Agricultural Code is amended to read:

5776. The notice distributed pursuant to this article shall contain all of the following:



(a) The date and approximate time of all proposed pesticide applications in the eradication area.

(b) The type of pesticide to be applied.

(c) Any health and safety precautions that should be taken.

(d) A telephone number and address of public health personnel who are familiar with the eradication program.

SEC. 9. Section 5777 of the Food and Agricultural Code is amended to read:

5777. The notice, other than the notice specified in Section 5774.5, shall be in both English and in any other language in a city or county in the area where the pesticide is to be applied in which over 5 percent of the persons receiving the notice speak only that other language.

SEC. 10. Section 5778 of the Food and Agricultural Code is amended to read:

5778. In every county that contains an eradication area in which a pesticide is used in the eradication effort, the department shall establish and operate a telephone service to provide information to the public on health issues related to application of the pesticide.

SEC. 11. Section 11404 of the Food and Agricultural Code is amended to read:

11404. "Pesticide" is defined in Section 12753.

SEC. 12. Section 11472 is added to the Food and Agricultural Code, to read:

11472. The director shall keep a separate record of the classes and sources of income that is credited to, and disbursed from, the Department of Pesticide Regulation Fund.

SEC. 13. Section 11472.1 is added to the Food and Agricultural Code, to read:

11472.1. On or before October 31 of each year, the department shall publish a financial report regarding the preceding fiscal year and shall make this report available to the public. The report shall describe in detail the amount and source of funding of, and the costs to operate, each branch of the department. The department also shall include information in the report regarding the

funding of major programs within those branches and other relevant information that may aid in evaluating the scope and impact of the activities of the department.

SEC. 14. Section 11501 of the Food and Agricultural Code is amended to read:

11501. The purposes of this division and Chapter 1 (commencing with Section 12501), Chapter 2 (commencing with Section 12751), Chapter 3 (commencing with Section 14001), and Chapter 3.5 (commencing with Section 14101) of Division 7 are as follows:

(a) To provide for the proper, safe, and efficient use of pesticides essential for production of food and fiber and for protection of the public health and safety.

(b) To protect the environment from environmentally harmful pesticides by prohibiting, regulating, or ensuring proper stewardship of those pesticides.

(c) To assure the agricultural and pest control workers of safe working conditions where pesticides are present.

(d) To permit agricultural pest control by competent and responsible licensees and permittees under strict control of the director and commissioners.

(e) To assure consumers and users that pesticides are properly labeled and are appropriate for the use designated by the label and that state or local governmental dissemination of information on pesticidal uses of any registered pesticide product is consistent with the uses for which the product is registered.

(f) To encourage the development and implementation of pest management systems, stressing application of biological and cultural pest control techniques with selective pesticides when necessary to achieve acceptable levels of control with the least possible harm to nontarget organisms and the environment.

SEC. 15. Section 11501.1 of the Food and Agricultural Code is amended to read:

11501.1. (a) This division and Division 7 (commencing with Section 12501) are of statewide concern and occupy the whole field of regulation



regarding the registration, sale, transportation, or use of pesticides to the exclusion of all local regulation. Except as otherwise specifically provided in this code, no ordinance or regulation of local government, including, but not limited to, an action by a local governmental agency or department, a county board of supervisors or a city council, or a local regulation adopted by the use of an initiative measure, may prohibit or in any way attempt to regulate any matter relating to the registration, sale, transportation, or use of pesticides, and any of these ordinances, laws, or regulations are void and of no force or effect.

(b) If the director determines that an ordinance or regulation, on its face or in its application, is preempted by subdivision (a), the director shall notify the promulgating entity that it is preempted by state law. If the entity does not repeal its ordinance or regulation, the director shall maintain an action for declaratory relief to have the ordinance or regulation declared void and of no force or effect, and shall also bring an action to enjoin enforcement of the ordinance or regulation.

(c) Neither this division nor Division 7 (commencing with Section 12501) is a limitation on the authority of a state agency or department to enforce or administer any law that the agency or department is authorized or required to enforce or administer.

(d) At the request of any state agency disseminating information on the pesticidal uses of any product, the director shall consult with, and provide technical assistance to, that agency to ensure that the dissemination is based on valid scientific information and consistent with state law.

SEC. 16. Section 11896 of the Food and Agricultural Code is amended to read:

11896. The director, upon a finding that the use, handling, delivery, or sale of a pesticide in violation of any provision of this division, or any regulation issued pursuant to it, is taking place, or appears imminent, and that activity if allowed to proceed will present an immediate hazard or cause irreparable damage, may

issue an order to the persons responsible for such activity to cease and desist from further commission of the violation.

SEC. 17. Section 11897 of the Food and Agricultural Code is amended to read:

11897. The agricultural commissioner, upon a finding that the use, handling, delivery or sale of a pesticide in violation of any provision of this division, or any regulation issued pursuant to it, is taking place, or appears imminent, and that activity if allowed to proceed will present an immediate hazard or cause irreparable damage, may issue an order to the persons responsible for the activity to cease and desist from further commission of the violation.

Any person aggrieved by a cease and desist order issued by an agricultural commissioner may appeal the order to the director, who shall affirm, modify, or rescind the order. The order of the agricultural commissioner shall remain in force during the appeal to the director, and until the director's decision has been rendered.

SEC. 18. Section 12115 of the Food and Agricultural Code is amended to read:

12115. (a) Each licensed pesticide dealer shall pay to the director an assessment of 9 mills (\$0.009) per dollar of the dealer's acquisition price or the registrant's sales price, whichever is higher, for all sales by the dealer into or within this state of pesticides registered by the director and labeled for agricultural use where the dealer is the person who first sold the pesticide into or within this state.

(b) Until June 30, 1997, each pesticide dealer shall pay an additional assessment of 12 mills (\$0.012) per dollar of sales for all sales by the dealer of its registered and labeled pesticides for use in this state.

SEC. 19. Section 12115.1 of the Food and Agricultural Code is amended to read:

12115.1. In addition to any assessment required to be paid pursuant to Section 12115, each dealer shall pay to the director an assessment of one mill (\$0.001) per dollar of the dealer's acquisition price or the registrant's sales price, whichever is higher, for all sales by the dealer into



or within this state of pesticides registered by the director and labeled for agricultural use where the dealer is the person who first sold the pesticide into or within this state. Revenue received under this section shall be distributed as provided in subdivisions (b) and (c) of Section 12841.1.

SEC. 20. Section 12115.3 of the Food and Agricultural Code is amended to read:

12115.3. (a) Each licensed pesticide dealer shall maintain at its principal place of business the records of its purchases, sales, and distributions of pesticides into or within this state, including those of its branch locations, for four years. Each dealer shall also maintain the pesticide broker license number of any pesticide broker from whom the dealer purchased pesticides registered by the director and labeled for agricultural use. The records shall be available for audit by the director.

(b) Each licensed pesticide dealer shall report quarterly to the director the dealer's acquisition price, the registrant's sale price, the total dollars of sales, and total pounds or gallons sold into or within this state of each pesticide registered by the director and labeled for agricultural use, for all sales subject to Sections 12115 and 12115.1. The quarterly report shall be in the form prescribed by the director and shall include information from the dealer's licensed branch locations, if any, and any other information specified on the form or required by the director. The report shall include a certification, under penalty of perjury, that the information contained in the report is true and correct. The report shall accompany payment of assessments required by Sections 12115 and 12115.1.

SEC. 21. Section 12115.5 of the Food and Agricultural Code is amended to read:

12115.5. Any licensed pesticide dealer who purchases pesticide products that are registered by the director pursuant to Chapter 2 (commencing with Section 12751) of Division 7 and labeled for agricultural use from a person other than a registrant or a licensed pesticide dealer, shall report in writing the name, address, telephone number, and pesticide broker license number

issued by the director, if any, of those persons to the director annually, by December 1 each year.

SEC. 22. Section 12503 of the Food and Agricultural Code is amended to read:

12503. “Pesticide chemical” means any substance that is used in the production, storage, or transportation of produce that is a pesticide as defined in Section 12753.

SEC. 23. Section 12648 of the Food and Agricultural Code is amended to read:

12648. (a) Notwithstanding any other provision of this code, a site within this state that has been treated with, or a plant, crop, or commodity, whether grown in this state or elsewhere, that has been treated with, or grown on a site treated with, a pesticide that is not registered for use on that plant, crop, commodity, or site is a public nuisance and may be seized by order of the director.

(b) The unlawful treatment described in subdivision (a) creates, in favor of the director, rebuttable presumptions affecting the burden of producing evidence pursuant to Section 604 of the Evidence Code as follows:

(1) That the treated plant, crop, commodity, or site, or any plant, crop, or commodity grown on the treated site, presents a hazard to human health or the environment.

(2) That the pesticide was used to gain an unfair business advantage for the owner or person in possession or control of the plant, crop, commodity, or site.

(c) The director shall provide notice to the owner or person in possession or control of the plant, crop, commodity, or site prior to seizure, unless the director has reason to believe that prior notice would result in the director’s loss of control of that plant, crop, commodity,

hearing shall be held not later than five days from the date the owner or person's request is received by the director. The director shall render a written decision within five days of the hearing or within five days of the expiration of the time to request a hearing if no hearing was requested. The decision shall either release the plant, crop, commodity, or site from seizure or make any of the following orders:

- (1) Destruction of the plant, crop, or commodity.
- (2) Prohibition of harvest or sale of the plant, crop, or commodity grown on the site.
- (3) Prohibition of the use or planting of the site, which may be for the period of any plant back time specified for the economic poison used on the site.
- (4) Any other appropriate action or measure.
- (d) Review of the decision of the director may be sought by the owner or person in possession or control of the plant, crop, commodity, or site pursuant to Section 1094.5 of the Code of Civil Procedure.

SEC. 24. Section 12648.5 of the Food and Agricultural Code is amended to read:

12648.5. (a) It is unlawful for the owner of a plant, crop, or commodity to knowingly treat or apply to that plant, crop, or commodity, or cause that plant, crop, or commodity to be treated or applied, with a pesticide that was stolen or otherwise acquired by illegal means.

(b) The owner of a crop, who is found by a court to have violated this section, in addition to any other penalties imposed by a court, shall be subject to a fine of ten thousand dollars (\$10,000) plus an amount equal to one-half the value of the crop on which the illegally obtained pesticide was applied.

(c) For purposes of this section, "one-half the value of the crop" means one-half the market value of the crop that was actually treated with the illegally obtained pesticide as determined by the actual sale of the crop or, if the crop is not actually sold, as determined by the director based on an average of the typical market value for such a crop sold in the normal channels of trade in the



year in which the crop was produced and in the preceding two years.

(d) Moneys received as a result of fines and penalties imposed pursuant to this section shall be divided and distributed as follows:

(1) Fifty percent to the county in which the case was brought to court or in which a court-approved settlement of the matter was negotiated.

(2) Twenty-five percent to the office of the county agricultural commissioner.

(3) Twenty-five percent to the department.

SEC. 25. Section 12648.6 of the Food and Agricultural Code is amended to read:

12648.6. Any person who is licensed pursuant to this code and who is found by a court to have knowingly sold, applied, or provided pesticides that were stolen or otherwise obtained illegally, in addition to any other penalty that may be imposed, shall have his or her license or licenses suspended for a minimum of 18 months.

SEC. 26. The heading of Chapter 2 (commencing with Section 12751) of Division 7 of the Food and Agricultural Code is amended to read:

CHAPTER 2. PESTICIDES

SEC. 27. Section 12753 of the Food and Agricultural Code is amended to read:

12753. “Pesticide” includes any of the following:

(a) Any spray adjuvant.

(b) Any substance, or mixture of substances which is intended to be used for defoliating plants, regulating plant growth, or for preventing, destroying, repelling, or mitigating any pest, as defined in Section 12754.5, which may infest or be detrimental to vegetation, man, animals, or households, or be present in any agricultural or nonagricultural environment whatsoever.

SEC. 28. Section 12755 of the Food and Agricultural Code is amended to read:



12755. “Registrant” means a person that has registered a pesticide and has obtained a certificate of registration from the department.

SEC. 29. Section 12757.5 of the Food and Agricultural Code is amended to read:

12757.5. “Service container” means any container, other than the original labeled container of a registered pesticide provided by the registrant, that is utilized to hold, store, or transport the pesticide or the use-dilution of the pesticide.

SEC. 30. Section 12758 of the Food and Agricultural Code is amended to read:

12758. “Spray adjuvant” means any wetting agent, spreading agent, deposit builder, adhesive, emulsifying agent, deflocculating agent, water modifier, or similar agent, with or without toxic properties of its own, which is intended to be used with another pesticide as an aid to the application or effect of the other pesticide, and sold in a package that is separate from that of the pesticide other than a spray adjuvant with which it is to be used.

SEC. 31. Section 12758.5 of the Food and Agricultural Code is amended to read:

12758.5. “Use-dilution” means a dilution specified on the label or labeling that produces the concentration of the pesticide for a particular purpose or effect.

SEC. 32. Section 12783 of the Food and Agricultural Code is amended to read:

12783. Any person who is charged with the enforcement or execution of this chapter shall not be directly or indirectly interested in the sale, manufacture, or distribution of any pesticide.

SEC. 33. Section 12802 of the Food and Agricultural Code is amended to read:

12802. A person may mix or dilute any registered pesticide in accordance with its registered labeling for his or her own use or for use in his or her own business without having become a registrant pursuant to this chapter.

SEC. 34. Section 12811 of the Food and Agricultural Code is amended to read:

12811. Every manufacturer of, importer of, or dealer in any pesticide, except a person that sells any raw material to a manufacturer of any pesticide or a dealer or agent that sells any pesticide that has been registered by the manufacturer or wholesaler, shall obtain a certificate of registration from the department before the pesticide is offered for sale.

SEC. 35. Section 12814 of the Food and Agricultural Code is amended to read:

12814. Any county, state, or federal officer or employee who sells any pesticide at cost is not required to pay any fee that is imposed by this chapter.

SEC. 36. Section 12815 of the Food and Agricultural Code is amended to read:

12815. If a manufacturer, importer, or dealer in pesticides that applies for registration of economic poisons has complied with this chapter and the regulations that are adopted pursuant to it, the director shall register each pesticide that is sought to be registered and issue a certificate of registration to the applicant that authorizes the manufacture and sale of the pesticide in this state.

SEC. 37. Section 12821 of the Food and Agricultural Code is amended to read:

12821. Each applicant for a certificate of registration shall also file a statement of every brand, trademark, and kind of pesticide that the applicant intends to manufacture or sell, the correct name and percentage of each active ingredient in the pesticide, and the total percentage of inert ingredients that are contained in the pesticide. The director, whenever he or she deems it necessary for the effective administration of this chapter, may require the submission of the complete formula for the pesticide.

SEC. 38. Section 12822 of the Food and Agricultural Code is amended to read:

12822. A supplemental application for registration of any additional pesticide may be submitted at any time without payment of the penalty required by Section 12818.



SEC. 39. Section 12823 of the Food and Agricultural Code is amended to read:

12823. A change in the name or percentage, or both, of an inert ingredient is not a change in composition of the pesticide that requires a new registration unless the change in inert material results in a change in the use or application of the pesticide.

SEC. 40. Section 12824 of the Food and Agricultural Code is amended to read:

12824. The director shall endeavor to eliminate from use in the state any pesticide that endangers the agricultural or nonagricultural environment, is not beneficial for the purposes for which it is sold, or is misrepresented. In carrying out this responsibility, the director shall develop an orderly program for the continuous evaluation of all pesticides actually registered.

Before a substance is registered as a pesticide for the first time there shall be a thorough evaluation in accordance with this section. Appropriate restrictions may be placed upon its use including, but not limited to, limitations on quantity, area, and manner of application. All pesticides for which renewal of registration is sought also shall be evaluated in accordance with this section.

The director may establish specific criteria to evaluate a pesticide with regard to the factors listed in Section 12825. The department may establish performance standards, and tests that are to be conducted or financed, or both, by the manufacturer of those pesticides.

SEC. 41. Section 12825 of the Food and Agricultural Code is amended to read:

12825. Pursuant to Section 12824, the director may, after hearing, cancel the registration of, or refuse to register, any pesticide:

(a) That has demonstrated serious uncontrollable adverse effects either within or outside the agricultural environment.

(b) The use of which is of less public value or greater detriment to the environment than the benefit received by its use.



(c) For which there is a reasonable effective and practicable alternate material or procedure that is demonstrably less destructive to the environment.

(d) That, when properly used, is detrimental to vegetation, except weeds, to domestic animals, or to the public health and safety.

(e) That is of little or no value for the purpose for which it is intended.

(f) Concerning which any false or misleading statement is made or implied by the registrant or his or her agent, either verbally or in writing, or in the form of any advertising literature.

(g) For which the director determines the registrant has failed to report an adverse effect or risk as required by Section 12825.5.

(h) If the director determines that the registrant has failed to submit the data required by regulation to be submitted as part of the reevaluation of the registrant's product.

(i) That is required to be registered pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.) and that is not so registered.

In making a determination pursuant to this section, the director may require those practical demonstrations as are necessary to determine the facts.

SEC. 42. Section 12825.5 of the Food and Agricultural Code is amended to read:

12825.5. (a) If, during the registration process or at any time after the registration of a pesticide, the registrant has factual or scientific evidence of any adverse effect or risk of the pesticide to human health, livestock, crops, or the environment that has not been previously submitted to the department, the registrant shall submit the evidence to the director in a timely manner. All such information, including, but not limited to, that information required under Section 6(a)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Sec. 136d (a)(2)), shall be submitted to the director.



(b) The director may adopt regulations that are reasonably necessary to carry out this section.

SEC. 43. Section 12826 of the Food and Agricultural Code is amended to read:

12826. If the director has reason to believe that any of the conditions stated in Section 12825 are applicable to any registered pesticide and that the use or continued use of that pesticide constitutes an immediate substantial danger to persons or to the environment, the director, after notice to the registrant, may suspend the registration of that pesticide pending a hearing and final decision. If an accusation pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code is not filed within 10 days from the date of the notice, the suspension shall be terminated.

SEC. 44. Section 12827 of the Food and Agricultural Code is amended to read:

12827. The director may cancel a certificate of registration, or, refuse to issue certification to any manufacturer, importer, or dealer in any pesticide that repeatedly violates any of the provisions of this chapter or the regulations of the director.

The proceedings shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The director has all the powers that are granted therein.

SEC. 45. Section 12827.5 of the Food and Agricultural Code is amended to read:

12827.5. Whenever the director cancels the registration of, or refuses to register, any pesticide currently registered by the United States Environmental Protection Agency, the director shall provide the applicant or registrant with the basis for the decision and the reasons why a conclusion different from, contrary to, or inconsistent with, the conclusion and findings of the United States Environmental Protection Agency was reached.

SEC. 46. Section 12828.5 of the Food and Agricultural Code is amended to read:

12828.5. (a) A registrant at any time may request that the registration of any of its pesticides be voluntarily canceled. The request shall be in writing and shall include a waiver of the registrant's right to a hearing on the cancellation.

(b) The director shall mail a notice of cancellation of registration of the pesticides to the registrant. The notice shall specify the effective date of the cancellation.

(c) The pesticides for which the registration is canceled may be sold and possessed as if the product's registration was not renewed unless the director determines that protection of human health or the environment require otherwise, in which case the cancellation notice shall specify the conditions under which the product may be sold or possessed after cancellation of its registration.

SEC. 47. Section 12829 of the Food and Agricultural Code is amended to read:

12829. If a person has a research authorization for a pesticide issued pursuant to Section 6260 of Title 3 of the California Code of Regulations for the purpose of testing the pesticide, and the produce on which the pesticide was tested is required to be destroyed, any actual costs incurred by the commissioner to investigate and confirm the destruction of the produce shall be paid for by the person who has the research authorization. The costs charged by the commissioner shall not exceed one hundred twenty-five dollars (\$125) per test site. The board of supervisors of each county may adopt a fee schedule to cover the commissioner's costs under this section.

SEC. 48. Section 12832 of the Food and Agricultural Code is amended to read:

12832. (a) Notwithstanding any other provision of this chapter, alfalfa and all vegetable crops, when grown for seed production, with the exception of corn, beans, pumpkin, and peas, shall be considered a nonfood and nonfeed site of pesticide use for the purpose of pesticide registration. In order to be determined to be a nonfood



or nonfeed site for the purposes of this section, the following conditions shall be met:

(1) All seed screenings shall be disposed of in such a way that they cannot be distributed or used for food or feed. The seed conditioner shall keep records of screenings disposal for three years from the date of disposal and shall furnish the records to the director upon request. Disposal records shall consist of documentation from a controlled waste disposal site, incinerator, cogeneration plant, composting facility, or other equivalent disposal site.

(2) No portion of the seed plant, including, but not limited to, green chop, hay, pellets, meal, whole seed, cracked seed, or seed screenings shall be used or distributed for food or feed purposes.

(3) All seed crops grown on a nonfood or nonfeed site in this state, or conditioned in this state, shall bear a tag or container label that forbids the use of the seed for human consumption or animal feed.

(4) No seed grown on a nonfood or nonfeed site in this state, or conditioned in this state, may be distributed for human consumption or animal feed.

(b) Nothing in this section prevents the department from imposing conditions for alfalfa seed sites in addition to those contained in this section, or from rescinding any current label requirements for pesticides approved for alfalfa seed production.

(c) Nothing in this section exempts the department from reviewing worker safety evaluations with regard to the use of pesticides involving crops specified in subdivision (a).

(d) A violation of any condition specified in subdivision (a) by the person responsible for the use of the pesticide is a violation of this chapter, and is subject to the civil and criminal penalties and injunctive relief provisions specified in Article 12 (commencing with Section 12996). A violation of any condition specified in subdivision (a) by the person responsible for the disposition of seed screenings is a violation of Chapter 6 (commencing with Section 14901) and is subject to



enforcement by the Department of Food and Agriculture.

SEC. 49. Section 12833 of the Food and Agricultural Code is amended to read:

12833. (a) Notwithstanding any other provision of this chapter, the director may issue a certificate of emergency registration for a pesticide if all of the following conditions are met:

(1) The pesticide is currently registered by the United States Environmental Protection Agency pursuant to Section 3 of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Sec. 136a) for the use specified in subparagraph (B) of paragraph (5).

(2) The active ingredient of the pesticide was previously registered under Section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Sec. 136p) in order to respond to an emergency pest control problem.

(3) The applicant demonstrates to the department that the pesticide qualifies for registration pursuant to Section 12815 and the department determines that it is probable that the pesticide will receive registration pursuant to this division within one year.

(4) The applicant for emergency registration submits to the director all data required for registration pursuant to this division and the regulations adopted pursuant to this division.

(5) The director makes both of the following findings based on substantial evidence:

(A) The use of the pesticide during the period of emergency registration will not pose a potential significant risk to public health or safety or to the environment. In making this finding, the director shall review the risks associated with the use of the pesticide and determine if those risks are significant given the limitations that will be imposed on the use of the pesticide during the emergency registration period.

(B) The emergency registration of the pesticide is necessary in order to effectively respond to an emergency pest control problem. For purposes of this



subparagraph, an emergency pest control problem shall be deemed to exist if the director finds that a pest infestation is present in the state for which no feasible pest control method is available that is a reasonable alternative to the use of the pesticide for which the emergency registration is requested. In making a determination pursuant to this subparagraph, the director shall identify the pest infestation that is the subject of the emergency, describe the pest control methods that have been demonstrated as ineffective against the infestation or that are otherwise not reasonable alternatives, and summarize the evidence that demonstrates that the pesticide for which emergency registration has been requested is efficacious against the pest infestation.

(b) At the same time as the director issues a certificate of emergency registration for a pesticide pursuant to this section, the director shall establish limitations on the use of the pesticide that the director determines are necessary to prevent a potential significant risk to human health or safety or the environment. The director shall limit the use of any pesticide granted a certificate of emergency registration to the control of the emergency pest infestation described in subparagraph (B) of paragraph (5) of subdivision (a).

(c) A certificate of emergency registration may be issued for a period not to exceed one year and may be renewed one time only.

(d) A certificate of emergency registration may not be renewed unless the director does all of the following:

(1) Publishes a notice that an application for renewal of the certificate of emergency registration has been received.

(2) Makes all of the following findings:

(A) That the findings made by the director in support of the certificate of emergency registration pursuant to paragraph (5) of subdivision (a) remain valid.

(B) That there are no indications that the pesticide, when used in accordance with applicable label instructions and the limitations established pursuant to



subdivision (b), poses a significant risk to worker safety and health. The director shall base this finding on a review of the data required for registration pursuant to this division, experience with the use of the pesticide during the period the certificate of emergency registration was in effect, and any other information the director has required the applicant to submit or received from the applicant or any other person.

(C) That the failure to complete the registration of the pesticide during the period the certificate of emergency registration was in effect is due to circumstances that were not under the control of the applicant, and that the data required for registration pursuant to this division is complete and meets all of the requirements of this division and the regulations adopted pursuant to this division.

(3) Convenes a workshop, if one is requested by any interested or aggrieved person, concerning the reasons for the renewal of the certificate of emergency registration. The director shall review information and comments provided by persons who attend the workshop and take that information and those comments into account in determining if the certificate of emergency registration may be renewed.

(e) The director shall immediately revoke any certificate of emergency registration issued pursuant to this section if either of the following occurs:

(1) The United States Environmental Protection Agency suspends or cancels the registration of the pesticide or the particular use of the active ingredient in the pesticide that allows it to be used in the emergency pest infestation described in subparagraph (B) of paragraph (5) of subdivision (a).

(2) The director determines during a subsequent review of data required for registration pursuant to this division that the use of the pesticide will pose a potential significant risk to the public health or safety or to the environment.

SEC. 50. Section 12841 of the Food and Agricultural Code is amended to read:



12841. (a) (1) Except as provided in subdivision (d), each registrant shall pay to the director an assessment not to exceed nine mills (\$0.009) per dollar of sales for all sales by the registrant of its registered and labeled pesticides for use in this state. There is a rebuttable presumption that pesticide products that are sold or distributed into or within this state by any person are sold or distributed for use in this state.

(2) From July 1, 1992, to June 30, 1997, inclusive, each registrant shall pay an additional assessment of twelve mills (\$0.012) per dollar of sales for all sales by the registrant of its registered and labeled pesticides for use in this state.

(3) A registrant is not required to pay an assessment on his or her products registered and labeled only for use in further manufacturing or formulating of pesticides. The director may reduce the assessment if he or she determines that a lesser assessment rate, together with other available funds, will provide adequate revenue to administer and enforce Division 6 (commencing with Section 11401), this chapter, Chapter 3 (commencing with Section 14001), and Chapter 3.5 (commencing with Section 14101).

(b) Upon application of any registrant, the director shall determine whether a fertilizer or paper product is used as a carrier for pesticides, and is sold in combination, and whether the mill assessment under this section shall be on the pesticide value only, when the product is designed, developed, manufactured, and sold primarily for other than a pesticide use. If the director finds that the combination product has such a major component and is designed, developed, manufactured, and sold primarily for other than a pesticide use, the assessment provided by this section shall be paid on the equivalent percentage of the sales price of the active ingredients of the pesticide product. The director shall establish this percentage of the sales price. The percentage shall be the ratio of that portion of the sales price attributable to the pesticide portion to the total sales price of the combination product.

(c) For purposes of this section, “active ingredient” means any active ingredient that is required to be stated on the label on any registered pesticide under Section 12883.

(d) Assessments provided for in this article for sales of registered pesticides that are labeled for agricultural use and sold for use in this state shall be paid by the registrant except in those cases where the registrant did not first sell the pesticide into or within this state or have actual knowledge, at the time of its sale, that the pesticide would be sold for use in this state. In those cases, the assessment shall be paid by the licensed pesticide broker or licensed pesticide dealer who first sold the pesticide into or within this state, as set forth in Article 1.5 (commencing with Section 12115) of Chapter 7 of Division 6 and Article 4.6 (commencing with Section 12848).

(e) It has been and continues to be the intent of the Legislature that this division requires the department to register all pesticides prior to their sale for use in this state and, except as otherwise provided by law, requires the department to regulate and control the use of pesticides in accordance with this division. The department shall continue to collect the assessment as provided in this section at the same rate on all registered agricultural and registered nonagricultural pesticides.

SEC. 51. Section 12841.1 of the Food and Agricultural Code is amended to read:

12841.1. (a) In addition to the assessment paid pursuant to Section 12841, from July 1, 1992, to June 30, 1997, inclusive, each registrant shall pay to the director an assessment of one mill (\$0.001) per dollar of sales for all sales by the registrant of its registered and labeled pesticides for use in this state. A registrant not required to pay an assessment pursuant to 12841 is not required to pay the assessment imposed by this section.

(b) Sixty-seven and one-half percent of the revenue received pursuant to this section shall be deposited monthly in a separate account in the Department of Food and Agriculture Fund. These revenues shall be expended only by the Department of Food and Agriculture, upon



appropriation, to provide consultation to the department pursuant to Section 11454.2. No funds may be expended prior to the execution of a memorandum of understanding pursuant to subdivision (b) of Section 11454.2. The consultation activities to be undertaken by the Department of Food and Agriculture are limited solely to those specifically authorized in the memorandum of understanding executed pursuant to Section 11454.2. In no case shall these funds be expended for scientific risk assessment activities.

(c) Thirty-two and one-half percent of the revenue received pursuant to this section, upon appropriation, shall be paid to the counties in a manner prescribed by the director as partial reimbursement for costs incurred by the counties in the administration of Section 12979.

SEC. 52. Section 12845 of the Food and Agricultural Code is amended to read:

12845. (a) The director may adopt regulations that require registrants to provide information determined by the director to be necessary to enable the director to perform the audit authorized pursuant to Section 12842 and to carry out other powers or duties under this division.

(b) The regulations adopted pursuant to this section may include, but are not limited to, a requirement that a registrant provide the director with information on the quarterly dollar sales of each registered pesticide sold for use in this state and the quarterly pounds of each registered pesticide sold for use in this state.

SEC. 53. Section 12847 of the Food and Agricultural Code is amended to read:

12847. Sales invoices for pesticides labeled for agricultural use and first sold into or within this state by the registrant, a pesticide broker, or a pesticide dealer shall show that the assessment specified in Sections 12115, 12115.1, 12841, 12841.1, 12848.6, and 12848.7 will be paid by the registrant, broker, or dealer, respectively. All other sales invoices for pesticides labeled for agricultural use and sold into or within this state by the registrant, a pesticide broker, or a pesticide dealer shall show that the

assessment will be paid, and may show an amount or rate that represents the assessment. However, only the person who actually will pay the assessment may show the amount or rate of the assessment as a line item on the sales invoice.

SEC. 54. Section 12848 of the Food and Agricultural Code is amended to read:

12848. It is unlawful for any person, other than the registrant or pesticide dealer licensed pursuant to Section 12107 to sell or distribute into or within this state any pesticide products that have been registered by the director and that are labeled for agricultural use, unless the person is licensed by the director as a pesticide broker. This article does not apply to persons who operate as sellers or distributors of pesticides that are labeled only for nonagricultural uses.

SEC. 55. Section 12848.1 of the Food and Agricultural Code is amended to read:

12848.1. (a) Application for a pesticide broker license, or renewal of a license, shall be in the form prescribed by the director. Each application for a license, or license renewal, shall state the name and address of the applicant, and any other information specified on the application or required by the director, and be accompanied by a fee of one hundred dollars (\$100).

(b) An additional license fee, or license renewal fee, of fifty dollars (\$50) shall be paid for each branch location of the applicant that sells or distributes into or within the state any pesticide products that are labeled for agricultural use.

SEC. 56. Section 12848.6 of the Food and Agricultural Code is amended to read:

12848.6. (a) Every person who is required to be licensed as a pesticide broker pursuant to Section 12848 shall pay to the director an assessment of 9 mills (\$0.009) per dollar of sales for all sales by that person into or within this state of pesticides registered by the director and labeled for agricultural use, if that person is the first person to sell the pesticide into or within this state.



(b) Until June 30, 1997, each person specified in subdivision (a) shall pay an additional assessment of 12 mills (\$0.012) per dollar of sales for all sales by the person of its registered and labeled pesticides for use in this state.

SEC. 57. Section 12848.7 of the Food and Agricultural Code is amended to read:

12848.7. In addition to any assessment required to be paid pursuant to Section 12848.6, each person who is required to be licensed as a pesticide broker pursuant to Section 12848 shall pay to the director an assessment of one mill (\$0.001) per dollar of sales for all sales by that person into or within this state of pesticides registered by the director and labeled for agricultural use, if that person is the first person to sell the pesticide into or within this state. Revenue received under this section shall be distributed as provided in subdivisions (b) and (c) of Section 12841.1.

SEC. 58. Section 12848.9 of the Food and Agricultural Code is amended to read:

12848.9. (a) Each licensed pesticide broker shall maintain at its principal place of business the records of its purchases and sales and distributions of pesticides into or within this state, including those of its branch locations, for four years. The records shall be available for audit by the director.

(b) Each licensed pesticide broker shall report quarterly to the director the total dollars of sales and total pounds or gallons sold into or within this state of each pesticide registered by the director and labeled for agricultural use, for all sales subject to Sections 12848.6 and 12848.7. The quarterly report shall be in the form prescribed by the director and shall include information from the broker's licensed branch locations, if any, and any other information specified on the form or required by the director. The report shall include a certification, under penalty of perjury, that the information contained in the report is true and correct. The report shall accompany payment of assessments required by Sections 12848.6 and 12848.7.

SEC. 59. Section 12851 of the Food and Agricultural Code is amended to read:

12851. The registrant of any pesticide shall attach to each separate lot, and each separate, finished, sealed, or closed container or package of pesticide that the registrant intends to sell within this state, a plainly printed label, that states all of the following:

(a) The name, brand, or trademark, if any, under which the pesticide is sold.

(b) The name and address of the registered manufacturer, importer, or vendor.

SEC. 60. Section 12852 of the Food and Agricultural Code is amended to read:

12852. The registrant of any pesticide that is sold or delivered to a consumer in this state shall furnish printed directions for use, and dilution if any, upon the label, or shall enclose the printed directions in each container or package of the pesticide.

SEC. 61. Section 12853 of the Food and Agricultural Code is amended to read:

12853. A registrant of pesticides may print upon the label of any sealed or closed container or package of pesticide that the registrant intends to sell within this state, or upon the label of any opened lot from which sales have been authorized by the director, such limitations of warranty with respect to the use of the pesticide, as the registrant may consider proper.

SEC. 62. Section 12854 of the Food and Agricultural Code is amended to read:

12854. No limitations of warranty by the seller shall exclude or waive either of the following implied warranties:

(a) That the pesticide corresponds to all claims and descriptions that the registrant has made in respect to it in print.

(b) That the pesticide is reasonably fit for use for any purpose for which it is intended according to any printed statement of the registrant.

SEC. 63. Section 12855 of the Food and Agricultural Code is amended to read:



12855. Except as otherwise provided in this article, the registrant is not liable for any injury or damage that is suffered solely by reason of any of the following:

(a) The use of the pesticide for a purpose that is not indicated by the label.

(b) The use of the pesticide contrary to the printed directions of the registrant or seller.

(c) The breach of any warranty by the registrant that is not expressly printed on the label.

SEC. 64. Section 12856 of the Food and Agricultural Code is amended to read:

12856. Except as otherwise provided in Section 12857, a pesticide shall not be sold unless it is in a registrant's sealed or closed container or package.

SEC. 65. Section 12857 of the Food and Agricultural Code is amended to read:

12857. The director, pursuant to regulations prescribed by him or her, may authorize sales of pesticides to be made out of a registrant's opened but properly labeled lot, container, or package. The director shall serve notice of the proposed action by depositing a copy of it in a United States post office, inclosed in a sealed envelope with postage prepaid and addressed to each registrant at his or her last address on file with the department. The director shall allow 15 days, during which time any protest may be filed.

SEC. 66. Section 12858 of the Food and Agricultural Code is amended to read:

12858. The statement of ingredients in any pesticide that is intended and sold for internal administration to animals may be given in terms of dosage in lieu of percentage by weight as required by Article 4 (commencing with Section 12811) and Article 6 (commencing with Section 12881).

SEC. 67. Section 12859 of the Food and Agricultural Code is amended to read:

12859. The director shall adopt regulations governing the labeling of service containers. The labeling regulations shall not apply to containers used by a person engaging in the business of farming when the containers

are used on the property that the person is farming. The regulations shall provide that the labeling only include the following:

- (a) The name and address of the person or firm responsible for the container.
- (b) The identity of the pesticide in the container.
- (c) The word “DANGER”, “WARNING”, or “CAUTION” in accordance with the label on the original container.

SEC. 68. Section 12881 of the Food and Agricultural Code is amended to read:

12881. A pesticide is misbranded in any of the following cases:

- (a) The package or label bears any false or misleading statement, design, or device regarding the article or any ingredient or substance that is contained in it.
- (b) The package or label is falsely branded as to the place of manufacture or production of the pesticide.
- (c) It is an imitation of, or offered for sale under the name of, another article.
- (d) It is labeled or branded so as to deceive or mislead the purchaser.

SEC. 69. Section 12882 of the Food and Agricultural Code is amended to read:

12882. A pesticide is also misbranded in any of the following cases:

- (a) The contents of the package as originally put up have been removed in whole or in part and other contents placed in the package.
- (b) The contents of the package are of a quality below that of the guarantee on the label, on the application for registration of the pesticide, or of the analysis of the representative sample delivered in connection with the application for registration of the pesticide.
- (c) If the contents of any package of a pesticide is stated in terms of weight or measure, and the weight or measure is not plainly and correctly stated on the outside of the package.



(d) The label does not conform to the registered label approved by the director under the standards of this division.

SEC. 70. Section 12883 of the Food and Agricultural Code is amended to read:

12883. Except as otherwise provided in Section 12884, a pesticide is also misbranded when the label fails to state one of the following:

(a) The name and percentage of each active ingredient, together with the total percentage of the inert ingredients, in the pesticide.

(b) The name of each active ingredient, together with the name of each and the total percentage of the inert ingredients, if there are any, in the pesticide.

A pesticide that is sold only as a spray adjuvant is not misbranded if the total percentage of the constituents ineffective as a spray adjuvant is stated on the label without mention of the terms “active ingredient” or “inert ingredient” in lieu of one of the options required by this section.

SEC. 71. Section 12884 of the Food and Agricultural Code is amended to read:

12884. If the preparation is highly toxic to humans, as determined by regulations of the director, a pesticide is misbranded if the label fails to state the name and percentage of each active ingredient together with the total percentage of the inert ingredients in the pesticide.

SEC. 72. Section 12911 of the Food and Agricultural Code is amended to read:

12911. A pesticide is adulterated in any of the following cases:

(a) Its strength or purity falls below the standard or quality that it is represented to have.

(b) Any ingredient that is necessary to its effectiveness has been wholly or in part abstracted or omitted in its manufacture, or other materials substituted for that ingredient.

(c) It is intended for use on vegetation and contains any substance that is seriously injurious to vegetation,



except weeds, if used according to the directions that are furnished with it.

SEC. 73. Section 12931 of the Food and Agricultural Code is amended to read:

12931. The director shall take samples of pesticides, make analyses or examinations of them, and make such investigations as are necessary for the full enforcement of this chapter.

SEC. 74. Section 12932 of the Food and Agricultural Code is amended to read:

12932. The director shall periodically, at least annually, print and distribute the results of examinations or chemical analyses of official samples of pesticides that are taken by him or her, and such additional information as the director deems advisable.

SEC. 75. Section 12961 of the Food and Agricultural Code is amended to read:

12961. The director may seize and quarantine any pesticide that is adulterated, misbranded, or detrimental to agriculture or to the public health, or which is otherwise not in conformity with any provision of this chapter.

SEC. 76. Section 12991 of the Food and Agricultural Code is amended to read:

12991. It is unlawful for any person, by himself or herself, or through another, in connection with any substance or mixture of substances included within the scope of this chapter, to do any of the following:

(a) Make any material or substantial misrepresentation.

(b) Make any false promises of a character likely to influence, induce or deceive.

(c) Engage in illegitimate business or dishonest dealing.

(d) Cause to be published or distributed any false or misleading literature, or cause to be displayed any false or misleading advertisement.

(e) For any person to use, store, transport, handle, or dispose of any pesticide, or of any container that holds or



has held a pesticide, except in compliance with rules and regulations of the director.

SEC. 77. Section 12992 of the Food and Agricultural Code is amended to read:

12992. It is unlawful for any person to sell any adulterated or misbranded pesticide.

In any prosecution of any agent or dealer under this section it is a complete defense to prove that the adulterated or misbranded pesticide that is the basis of the prosecution was guaranteed by the party from whom the agent or dealer purchased it to be not adulterated or misbranded.

SEC. 78. Section 12993 of the Food and Agricultural Code is amended to read:

12993. It is unlawful for any person to manufacture, deliver, or sell any pesticide or any substance or mixture of substances that is represented to be a pesticide, or to retail any formula for a pesticide in conjunction with the sale or gift of materials that are represented to be the essential ingredients necessary to constitute a pesticide, which is not registered pursuant to this chapter, or for which the registration has been suspended or canceled, except as provided in regulations adopted by the director or as provided in the notice or order of suspension or cancellation. This section, however, does not apply to any pesticide product of a registrant that is manufactured solely for export outside this state, and which is so exported.

SEC. 79. Section 12994 of the Food and Agricultural Code is amended to read:

12994. It is unlawful for any person to transport, destroy, or dispose of any quarantined pesticide, unless the person has received written permission from the director.

SEC. 80. Section 12995 of the Food and Agricultural Code is amended to read:

12995. Except as provided in regulations adopted by the director or as provided in the notice or order of suspension or cancellation, it is unlawful for any person, by himself or herself or through another, to possess or use

any pesticide that is not registered pursuant to this chapter, or for which registration has been suspended.

SEC. 81. Section 13101 of the Food and Agricultural Code is amended to read:

13101. The director, upon a finding that the use, handling, delivery, or sale of a pesticide in violation of any provision of this division, or any regulation issued pursuant to it, is taking place, or appears imminent, and that activity, if allowed to proceed, will present an immediate hazard or cause irreparable damage, may issue an order to the persons responsible for that activity to cease and desist from further commission of the violation.

SEC. 82. Section 13102 of the Food and Agricultural Code is amended to read:

13102. The agricultural commissioner, upon a finding that the use, handling, delivery, or sale of a pesticide in violation of any provision of this division, or any regulation issued pursuant to it, is taking place, or appears imminent, and that activity, if allowed to proceed, will present an immediate hazard or cause irreparable damage, may issue an order to the persons responsible for that activity to cease and desist from further commission of the violation.

Any person aggrieved by a cease and desist order issued by an agricultural commissioner may appeal the order to the director, who shall affirm, modify, or rescind the order. The order of the agricultural commissioner shall remain in force during the appeal to the director, and until the director's decision has been rendered.

SEC. 83. Section 13142 of the Food and Agricultural Code is amended to read:

13142. For the purposes of this article, the following definitions apply:

(a) "Active ingredient" has the same meaning as defined in Section 136 of Title 7 of the United States Code.

(b) "Agricultural use" has the same meaning as defined in Section 11408.

(c) "Board" means the State Water Resources Control Board.



(d) “Chemigation” means a method of irrigation whereby a pesticide is mixed with irrigation water before the water is applied to the crop or to the soil.

(e) “Degradation product” means a substance resulting from the transformation of a pesticide by physicochemical or biochemical means.

(f) “Groundwater protection data gap” means that, for a particular pesticide, the director, after study, has been unable to determine that each study required pursuant to subdivision (a) of Section 13143 has been submitted or that each study submitted pursuant to subdivision (a) of Section 13143 is valid, complete, and adequate.

(g) “Henry’s Law constant” is an indicator of the escaping tendency of dilute solutes from water and is approximated by the ratio of the vapor pressure to the water solubility at the same temperature.

(h) “Pesticide” is defined in Section 12753.

(i) “Pesticide registrant” means a person that has registered a pesticide pursuant to this chapter.

(j) “Pollution” means the introduction into the groundwaters of the state of an active ingredient, other specified product, or degradation product of an active ingredient of a pesticide above a level, with an adequate margin of safety, that does not cause adverse health effects.

(k) “Soil adsorption coefficient” is a measure of the tendency of pesticides, or their biologically active transformation products, to bond to the surfaces of soil particles.

(l) “Soil microbial zone” means the zone of the soil below which the activity of microbial species is so reduced that it has no significant effect on pesticide breakdown.

SEC. 84. Section 13143 of the Food and Agricultural Code is amended to read:

13143. (a) Not later than December 1, 1986, a person that has registered a pesticide in California for agricultural use shall submit to the director the information prescribed in this subdivision. The

information shall be submitted for each active ingredient in each pesticide registered. The registrant shall submit all of the following information:

- (1) Water solubility.
- (2) Vapor pressure.
- (3) Octanol-water partition coefficient.
- (4) The soil adsorption coefficient.
- (5) Henry's Law constant.
- (6) Dissipation studies, including hydrolysis, photolysis, aerobic and anaerobic soil metabolism, and field dissipation, under California or similar environmental use conditions.
- (7) Any additional information the director determines is necessary.

(b) The director also may require the information prescribed in subdivision (a) for other specified ingredients and degradation products of an active ingredient in any pesticide. The director shall also require this information when the State Department of Health Services or the board submits a written request for the information to the director, if the State Department of Health Services or the board specifies the reasons why it considers the information necessary. The director shall deny the request upon a written finding that, based on available scientific evidence, the request would not further the purposes of this article.

(c) All information submitted pursuant to subdivision (a) shall be presented in English and summarized in tabular form on no more than three sheets of paper with the actual studies, including methods and protocols attached. All information, at a minimum, shall meet the testing methods and reporting requirements provided by the Environmental Protection Agency Pesticide Assessment Guidelines, Subdivision D Series 60 to 64, inclusive, for product chemistry and Subdivision N Series 161 to 164, inclusive, for environmental fate, including information required for degradation products in specific studies. With prior approval from the director, registrants may use specified alternative protocols as permitted by the United States Environmental Protection Agency



guidelines, if the director finds use of the protocol is consistent with, and accomplishes the objectives of, this article. Studies conducted on active ingredients in the formulation of pesticides shall meet the same testing methods as required for studies conducted on active ingredients. The department, in consultation with the board, in addition, may require specified testing protocols that are specific to California soil and climatic conditions. The director may give a pesticide registrant an extension of up to two years if it determines that this additional time is necessary and warranted to complete the studies required in paragraph (6) of subdivision (a). No extension of the deadline for these studies shall go beyond December 1, 1989. When seeking the extension, the registrant shall submit to the director a written report on the current status of the dissipation studies for which the extension is being sought. For registrants granted an extension pursuant to this section, Section 13145 shall be effective upon the completion date established by the director.

(d) The director may grant the registrant an extension beyond the one authorized in subdivision (c), if all of the following conditions are met:

(1) The registrant submits a written request to the director for an extension beyond the one granted pursuant to subdivision (c). The request shall include the reasons why the extension is necessary and the findings produced by the study up to the time the request is made.

(2) The director finds that the registrant has made every effort to complete the studies required in paragraph (6) of subdivision (a) within the required time limits of the extension granted pursuant to subdivision (c) and that those studies could not be completed within the required time limits due to circumstances beyond the control of the registrant.

(3) The director establishes a final deadline, not to exceed one year beyond the time limit of the extension granted pursuant to subdivision (c), and a schedule of progress by which the registrant shall complete the studies required in paragraph (6) of subdivision (a).



(e) After December 1, 1986, no registration of any new pesticide shall be granted unless the applicant submits all of the information required by the director pursuant to this article and the director finds that the information meets the requirements of this article.

SEC. 85. Section 13144 of the Food and Agricultural Code is amended to read:

13144. (a) Not later than December 1, 1986, the department shall establish specific numerical values for water solubility, soil adsorption coefficient (Koc), hydrolysis, aerobic and anaerobic soil metabolism, and field dissipation. The values established by the department shall be at least equal to those established by the Environmental Protection Agency. The department may revise the numerical values when the department finds that the revision is necessary to protect the groundwater of the state. The numerical values established or revised by the department shall always be at least as stringent as the values being used by the Environmental Protection Agency at the time the values are established or revised by the department.

(b) Not later than December 1, 1987, and annually thereafter, the director shall report the following information to the Legislature, the State Department of Health Services, and the board for each pesticide registered for agricultural use:

(1) A list of each active ingredient, other specified ingredient, or degradation product of an active ingredient of a pesticide for which there is a groundwater protection data gap.

(2) A list of each pesticide that contains an active ingredient, other specified ingredients, or degradation product of an active ingredient that is greater than one or more of the numerical values established pursuant to subdivision (a), or is less than the numerical value in the case of soil adsorption coefficient, in both of the following categories:

(A) Water solubility or soil adsorption coefficient (Koc).



(B) Hydrolysis, aerobic soil metabolism, anaerobic soil metabolism, or field dissipation.

(3) For each economic poison listed pursuant to paragraph (2) for which information is available, a list of the amount sold in California during the most recent year for which sales information is available and where and for what purpose the pesticide was used, when this information is available in the pesticide use report.

(c) The department shall determine to the extent possible, the toxicological significance of the degradation products and other specified ingredients identified pursuant to paragraph (2) of subdivision (b).

SEC. 86. Section 13145 of the Food and Agricultural Code is amended to read:

13145. (a) Any registrant of a pesticide identified in paragraph (1) of subdivision (b) of Section 13144 is subject to a fine of up to ten thousand dollars (\$10,000) for each day the groundwater protection data gap exists. In determining the amount of the fine, the director shall consider both of the following:

(1) The extent to which the registrant has made every effort to submit valid, complete, and adequate information within the required time limits.

(2) Circumstances beyond the control of the registrant that have prevented the registrant from submitting valid, complete, and adequate information within the required time limits.

(b) If there is a dispute between the director and a registrant regarding the existence of a groundwater protection data gap and the director desires to levy a fine on the registrant pursuant to this section, the director shall submit the issues of the dispute to the subcommittee created pursuant to subdivision (b) of Section 13150. The subcommittee shall review the evidence submitted by the registrant and the director and make recommendations to the director on whether or not the groundwater data gap exists.

(c) Subdivisions (a) and (b) shall not apply to pesticide products whose registration has lapsed or has



been canceled, or to products that have been granted a current extension pursuant to Section 13143.

(d) The director shall, by regulation, establish a list of pesticides that have the potential to pollute groundwater. The list shall be entitled the Groundwater Protection List. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the director shall immediately place all pesticides identified in paragraph (2) of subdivision (b) of Section 13144 on the Groundwater Protection List and shall regulate the use of these pesticides if the pesticide is intended to be applied to or injected into the soil by ground-based application equipment or by chemigation, or the label of the pesticide requires or recommends that the application be followed, within 72 hours, by flood or furrow irrigation. The director shall adopt regulations to carry out this article. The regulations shall include, but are not limited to, the following:

(1) Any person who uses a pesticide that has been placed on the Groundwater Protection List and does not file a report pursuant to Section 12979, is required to report to the county agricultural commissioner the use of the pesticide on a form prescribed by the director. The reporting deadline shall conform to the deadline established for the reporting of the use of restricted materials.

(2) Dealers of pesticides shall make quarterly reports to the director of all sales of pesticides that have been placed on the Groundwater Protection List to persons who are not otherwise required to file a report pursuant to either paragraph (1) or Section 12979. This report shall include lists of all sales by purchases.

SEC. 87. Section 13146 of the Food and Agricultural Code is amended to read:

13146. (a) The director shall not register or renew the registration of a pesticide intended to be applied to or injected into the ground by ground-based application equipment or by chemigation after December 1, 1988, if there is a groundwater protection data gap for that



pesticide, unless the registrant has been granted a current extension pursuant to Section 13143.

(b) The director shall not register or renew the registration of a pesticide intended for use with other than ground-based application equipment after December 1, 1989, if there is a groundwater protection data gap for that pesticide, unless the registrant has been granted a current extension pursuant to Section 13143.

(c) If a registrant does not comply with the information requirements of Section 13143, the department shall file the information requirements of Section 13143 in accordance with procedures provided in subparagraph (B) of paragraph (2) of subsection (c) of Section 136a of Title 7 of the United States Code. In order to carry out this section, the director has the same authority to require information from registrants of active pesticide ingredients that the administrator of the Environmental Protection Agency has pursuant to subparagraph (B) of paragraph (2) of subsection (c) of Section 136a of Title 7 of the United States Code. On or before July 1, 1986, the director shall, by regulation, prescribe procedures for resolving disputes or funding the filing of the information requirements of Section 13143. The procedures may include mediation and arbitration. The arbitration procedures, insofar as practical, shall be consistent with the federal act, or otherwise shall be in accordance with the commercial arbitration rules established by the American Arbitration Association. The procedures shall be established so as to resolve any dispute with the timetable established in Section 13143.

(d) For an active ingredient or pesticide for which a registrant or registrants do not provide the information required pursuant to Section 13143, the director may determine the active ingredient or pesticide to be critical to agricultural production and the director may utilize assessments charged to those registrants of the active ingredient for which the information is required pursuant to Section 13143 in amounts necessary to cover the department's expenses in obtaining the information. The



assessment shall be made pursuant to Section 12824. The director may also request an appropriation to be used in combination with assessments to obtain the required information.

SEC. 88. Section 13147 of the Food and Agricultural Code is amended to read:

13147. The director shall annually request a budget appropriation in order to meet the reasonable and anticipated costs of conducting soil and water monitoring pursuant to Section 13148, a review of data submitted pursuant to Section 13143, and the administration of pesticides placed on the Groundwater Protection List pursuant to this article.

SEC. 89. Section 13148 of the Food and Agricultural Code is amended to read:

13148. (a) In order to more accurately determine the mobility and persistence of the pesticides identified pursuant to paragraph (2) of subdivision (b) of Section 13144 and to determine if these pesticides have migrated to groundwaters of the state, the director shall conduct soil and groundwater monitoring statewide in areas of the state where the pesticide is primarily used or where other factors identified pursuant to Section 13143 and subdivision (b) of Section 13144, including physicochemical characteristics and use practices of the pesticides, indicate a probability that the pesticide may migrate to the groundwaters of the state. The monitoring shall commence within one year after the pesticide is placed on the Groundwater Protection List and shall be conducted in accordance with standard protocol and testing procedures established pursuant to subdivision (b). Monitoring programs shall replicate conditions under which the pesticide is normally used in the area of monitoring. In developing a monitoring program, the director shall coordinate with other agencies that conduct soil and groundwater monitoring.

(b) Within 90 days after a pesticide is placed on the Groundwater Protection List pursuant to subdivision (d) of Section 13145, the director, in consultation with the board, shall develop a standard protocol and testing



procedure for each pesticide identified pursuant to subdivision (d) of Section 13145.

(c) The director shall report all monitoring results to the State Department of Health Services and the board.

SEC. 90. Section 13149 of the Food and Agricultural Code is amended to read:

13149. (a) Within 90 days after a pesticide is found under any of the conditions listed in paragraph (1), (2), or (3), the director shall determine whether the pesticide resulted from agricultural use in accordance with state and federal laws and regulations, and shall state in writing the reasons for the determination.

(1) An active ingredient of a pesticide has been found at or below the deepest of the following depths:

(A) Eight feet below the soil surface.

(B) Below the root zone of the crop where the active ingredient was found.

(C) Below the soil microbial zone.

(2) An active ingredient of a pesticide has been found in the groundwaters of the state.

(3) The pesticide has degradation products or other specified ingredients that pose a threat to public health and that have been found under the conditions specified for active ingredients in either paragraph (1) or (2).

(b) Upon a determination by the director that a pesticide meets any of the conditions specified in paragraph (1), (2), or (3) of subdivision (a) as a result of agricultural use in accordance with state and federal laws and regulations, the director shall immediately notify the registrant of the determination and of the registrant's opportunity to request a hearing pursuant to subdivision (c).

(c) Any pesticide that meets any of the conditions in subdivision (b) shall be subject to Section 13150 if the registrant of the pesticide requests, within 30 days after the notice is issued, that the subcommittee conduct a hearing, as described in Section 13150. Notwithstanding any other provision of law, if the registrant does not request the hearing within 30 days after the notice is

issued, the director shall cancel the registration of the pesticide.

(d) For the purposes of this section, any finding of a pesticide shall result from either an analytical method approved by the department that provides unequivocal identification of a chemical, such as mass spectroscopy, or from verification, within 30 days, by a second analytical method or a second analytical laboratory approved by the department.

SEC. 91. Section 13150 of the Food and Agricultural Code is amended to read:

13150. The director may allow the continued registration, sale, and use of a pesticide that meets any one of the conditions specified in Section 13149 if all of the following conditions are met:

(a) The registrant submits a report and documented evidence that demonstrate both of the following:

(1) That the presence in the soil of any active ingredient, other specified ingredient, or degradation product does not threaten to pollute the groundwater of the state in any region within the state in which the pesticide may be used according to the terms under which it is registered.

(2) That any active ingredient, other specified ingredient, or degradation product that has been found in groundwater has not polluted, and does not threaten to pollute, the groundwater of the state in any region within the state in which the pesticide may be used according to the terms under which it is registered.

(b) A subcommittee of the director's pesticide registration and evaluation committee, consisting of one member each representing the director, the State Department of Health Services, and the board, holds a hearing, within 180 days after it is requested by the registrant, to review the report and documented evidence submitted by the registrant and any other information or data that the subcommittee determines is necessary to make a finding.



(c) The subcommittee, within 90 days after the hearing is conducted, makes any of the following findings and recommendations:

(1) That the ingredient found in the soil or groundwater has not polluted, and does not threaten to pollute, the groundwater of the state.

(2) That the agricultural use of the pesticide can be modified so that there is a high probability that the pesticide would not pollute the groundwater of the state.

(3) That modification of the agricultural use of the pesticide pursuant to paragraph (2) or cancellation of the pesticide will cause severe economic hardship on the state's agricultural industry, and that no alternative products or practices can be effectively used so that there is a high probability that pollution of the groundwater of the state will not occur. The subcommittee shall recommend a level of the pesticide that does not significantly diminish the margin of safety recognized by the subcommittee to not cause adverse health effects.

When the subcommittee makes a finding pursuant to paragraph (2) or this paragraph (3), it shall determine whether the adverse health effects of the pesticide are carcinogenic, mutagenic, teratogenic, or neurotoxic.

(d) The director, within 30 days after the subcommittee issues its findings, does any of the following:

(1) Concurs with the subcommittee finding pursuant to paragraph (1) of subdivision (c).

(2) Concurs with the subcommittee finding pursuant to paragraph (2) of subdivision (c), and adopts modifications that result in a high probability that the pesticide would not pollute the groundwaters of the state.

(3) Concurs with the subcommittee findings pursuant to paragraph (3) of subdivision (c), or determines that the subcommittee finding pursuant to paragraph (2) of subdivision (c) will cause severe economic hardship on the state's agricultural industry. In either case, the director shall adopt the subcommittee's recommended level or shall establish a different level, provided the level



does not significantly diminish the margin of safety to not cause adverse health effects.

(4) Determines that, contrary to the finding of the subcommittee, no pollution or threat to pollution exists. The director shall state the reasons for his or her decisions in writing at the time any action is taken, specifying any differences with the subcommittee's findings and recommendations. The written statement shall be transmitted to the appropriate committees of the Senate and Assembly, the State Department of Health Services, and the board.

When the director takes action pursuant to paragraph (2) or (3), he or she shall determine whether the adverse health effects of the pesticide are carcinogenic, mutagenic, teratogenic, or neurotoxic.

SEC. 92. Section 13151 of the Food and Agricultural Code is amended to read:

13151. Any pesticide identified pursuant to Section 13149 that fails to meet any of the conditions of Section 13150 shall be canceled.

SEC. 93. Section 13152 of the Food and Agricultural Code is amended to read:

13152. (a) The director shall conduct ongoing soil and groundwater monitoring of any pesticide whose continued use is permitted pursuant to paragraph (3) of subdivision (d) of Section 13150.

(b) Any pesticide monitored pursuant to this section that is determined, by review of monitoring data and any other relevant data, to pollute the groundwaters of the state two years after the director takes action pursuant to paragraph (3) of subdivision (d) of Section 13150 shall be canceled unless the director has determined that the adverse health effects of the pesticide are not carcinogenic, mutagenic, teratogenic, or neurotoxic.

(c) The director shall maintain a statewide data base of wells sampled for pesticide active ingredients. All agencies shall submit to the director, in a timely manner, the results of any well sampling for pesticide active ingredients and the results of any well sampling that detect any pesticide active ingredients.



(d) Not later than June 30, 1986, the director, the State Department of Health Services, and the board shall jointly establish minimum requirements for well sampling that will ensure precise and accurate results. The requirements shall be distributed to all agencies that conduct well sampling. All well sampling conducted after December 1, 1986, shall meet the minimum requirements established pursuant to this subdivision.

(e) The director, in consultation with the State Department of Health Services and the board, shall report the following information to the Legislature, the State Department of Health Services, and the board on or before December 1, 1986, and annually thereafter:

(1) The number of wells sampled for pesticide active ingredients, the location of the wells from which the samples were taken, the well numbers, if available, and the agencies responsible for drawing and analyzing the samples.

(2) The number of well samples with detectable levels of pesticide active ingredients, the location of the wells from which the samples were taken, the well numbers, if available, and the agencies responsible for drawing and analyzing the samples.

(3) An analysis of the results of well sampling described in paragraphs (1) and (2), to determine the probable source of the residues. The analysis shall consider factors such as the physical and chemical characteristics of the pesticide, volume of use and method of application of the pesticide, irrigation practices related to use of the pesticide, and types of soil in areas where the pesticide is applied.

(4) Actions taken by the director and the board to prevent pesticides from migrating to groundwaters of the state.

SEC. 94. Section 14012 of the Food and Agricultural Code is amended to read:

14012. (a) Any person who is required to register pesticides under Article 4 (commencing with Section 12811) of Chapter 2, and who sells or transfers any restricted material, shall keep accurate records of the



amount and type of material involved in every sale or transfer of any restricted material. The records shall be open during ordinary business hours to the inspection of the director.

(b) Each commissioner shall submit to the director a copy of each pesticide use report received pursuant to Section 14011.5, and any other relevant information the director may require. Copies of the reports from the commissioners shall be rendered to the director within one calendar month after they are received.

The contents of these reports shall be summarized quarterly by the director as to the type of material and amounts, and the summaries shall be made a public record. The director may publish or distribute the summaries.

SEC. 95. Section 14021 of the Food and Agricultural Code is amended to read:

14021. (a) As used in this article, “pesticide” is defined in Section 12753.

(b) For purposes of this article, “toxic air contaminant” means an air pollutant that may cause or contribute to an increase in mortality or an increase in serious illness, or which may pose a present or potential hazard to human health. Pesticides that have been identified as hazardous air pollutants pursuant to Section 7412 of Title 42 of the United States Code shall be identified by the director as toxic air contaminants.

SEC. 96. Section 14063 of the Food and Agricultural Code is amended to read:

14063. Subject to regulations of the director, any of the following persons may sell, use, or possess Compound 1080 for the purposes or uses that are specified:

(a) Any federal, state, county, or municipal officer or employee, in his or her official capacity, or any person under the immediate supervision of that officer or employee, may possess Compound 1080 for use for pest control purposes.

(b) Any research or chemical laboratory may possess Compound 1080 for use for the purposes of the laboratory.



(c) Any person duly licensed as a structural pest control operator under Chapter 14 (commencing with Section 8500), Division 3 of the Business and Professions Code, may possess Compound 1080 for use in his or her business.

(d) Any wholesaler or jobber of any pesticide may sell Compound 1080 to any person included within the above classifications, or for export.

SEC. 97. Section 14101 of the Food and Agricultural Code is amended to read:

14101. As used in this division, “environment” means the aggregate of all factors that influence the conditions of life in or about the state or within any portion thereof, and which are affected by the use of pesticides or related materials within the state.

SEC. 98. Section 14262 of the Food and Agricultural Code is amended to read:

14262. This chapter also does not apply to any of the following:

(a) Any livestock drug that is intended for, and that is used solely for, laboratory or experimental purposes.

(b) Any substance that is intended for, and that is used primarily as a pesticide and that is registered as a pesticide under Chapter 2 (commencing with Section 12751).

(c) Any biological product that is manufactured under a license issued by the United States Department of Agriculture or the State Department of Health.

(d) Any drug that is required by federal law to be sold on prescription only.

SEC. 99. Section 14513 of the Food and Agricultural Code is amended to read:

14513. “Auxiliary soil and plant substance” means any chemical or biological substance or mixture of substances or device distributed in this state to be applied to soil, plants, or seeds for soil corrective purposes; or that is intended to improve germination, growth, yield, product quality, reproduction, flavor, or other desirable characteristics of plants; or that is intended to produce any chemical, biochemical, biological, or physical change

in soil; but does not include commercial fertilizers, agricultural minerals, pesticides, soil amendments, or manures. It shall include the following:

- (a) Bacterial inoculants.
- (b) Biotics.
- (c) Lignin or humus preparations.
- (d) Microbial products, including genetically engineered microorganisms.
- (e) Soil binding agents.
- (f) Synthetic polyelectrolytes.
- (g) Wetting agents to promote water penetration.
- (h) Any similar product intended to be used for influencing soils, plant growth, or crop or plant quality.



Approved _____, 1996

Governor

